

**Editor's note: Reconsideration denied by order dated Sept. 2, 1971; Appealed – rev'd and remanded, Civ. No.72-467 PHX-WEC (D.Ariz. Feb. 1, 1974); See United States v. Lee H. and Goldie E. Rice, 73 IBLA 128 (May 23, 1983).**

UNITED STATES

v.

LEE H. RICE AND

GOLDIE E. RICE

IBLA 70-30      Decided April 6, 1971

Rules of Practice: Appeals: Statement of Reasons - Rules of Practice: Appeals: Dismissal - Rules of Practice: Appeals: Service on Adverse Party

While it is not mandatory that an appeal to the Director of the Bureau of Land Management be summarily dismissed on the ground that the appellants did not serve either the notice of appeal or statement of reasons for appeal on the adverse party and file proof of service, the appeal may be summarily dismissed if the Board of Land Appeals in the exercise of its discretion determines that the circumstances warrant dismissal.

2 IBLA 124

IBLA 70-30 : Arizona Contests

UNITED STATES

v.

LEE H. RICE and :

GOLDIE E. RICE :

: A-463, A-752, A-753  
: and A-754

:  
: Appeal dismissed

Set aside; mining claims  
: held null and void

## DECISION

Lee H. Rice and Goldie E. Rice have appealed to the Secretary of the Interior from a decision dated February 7, 1969, of the Office of Appeals and Hearing, Bureau of Land Management, which dismissed their appeal from a decision of a hearing examiner holding 10 lode mining claims null and void.

The notice of appeal to the Director was timely filed on October 9, 1968, and the statement of reasons for appeal was in turn properly filed on October 22, 1968. 43 CFR 1842.4, 1842.5-1. <sup>1</sup>/\* However, appellants failed to furnish the proof of service upon the adverse party named in the hearing examiner's decision, as required by 43 CFR 1842.5-2\*. Although the appellants say they sent a copy of the notice of appeal and statement of reasons for the appeal to the adverse party within the allotted time, they did not send the documents by registered or certified mail, and the adverse party says he never received them. He acknowledges, however, that the appellants did mail him a copy of the statement of reasons in December 1968, which he received on December 16, 1968.

The Office of Appeals and Hearings held that the regulations require that an appeal be summarily dismissed if the notice of appeal or statement of reasons is not served upon the adverse party in

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<sup>1</sup>/\* The regulations governing appeals procedures were revised by Circular 2273, June 12, 1970, 35 F.R. 10009, to reflect the reorganization of the appellate structure of the Department for handling appeals in public land cases. The revision did not change the time periods or service requirements necessary to perfect an appeal.

accordance with their requirements. The regulations provide that an appeal deficient for such neglect "will be subject to summary dismissal," 43 CFR 1840.0-7.\*

In the recent case of Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969), the court held that dismissal of an appeal under the terms of this regulation is discretionary, not mandatory. It set aside a decision of the Director, affirmed by the Secretary, summarily dismissing an appeal for the late filing of a statement of reasons and remanded the case to the Director for an exercise of discretion as to whether the appeal should be dismissed or the late filing accepted.

Although the appellants have failed to comply with a different requirement of the regulations, the penalty for their omission is set by the same paragraph of the regulations. Accordingly, their omissions do not require summary dismissal, but must be evaluated within the discretionary power of the Secretary's appellate authority. 2/

As we have seen, the Rices filed a timely notice of appeal and statement of reasons for appeal and they say they served the adverse party with copies within the proper time. They did not, however, serve the adverse party personally or by registered or certified mail and failed to file proof of service with the Director, as required by 43 CFR 1840.0-6(e). When the Office of Appeals and Hearings asked them for proof of service, they replied that they had mailed copies to the adverse party and that they had sent him another one. Again, however, they neglected to file a proof of service. It was only after another inquiry to the adverse party that the Office of Appeals and Hearings was able to establish if and when any service had been made. A process that should have been completed in October without any action by the Bureau of Land Management was not concluded until January. Even then, proof of service was acknowledged by the adverse party, not proven by the appellants.

The appellant's dereliction imposed many unnecessary administrative burdens on the Bureau and left it and the adverse

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2/ Effective as of July 1, 1970, the Department established a Board of Land Appeals in an Office of Hearings and Appeals to exercise the authority of the Secretary in deciding appeals from decisions of officers of the Bureau of Land Management and hearing examiners. 35 F.R. 10009. Therefore, the determination of whether the appeal is to be dismissed is now to be made by this Board.

party uncertain for several months as to the status of the contests. The procedural requirements of the appellate process are designated to avoid just such results.

While not every case of a failure to conform to the rules of practice governing appeals will require that an appeal be summarily dismissed, it is our conclusion that the several defaults of the appellants cannot be condoned and that their appeal was properly dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed.

Martin Ritvo, Member

We concur.

Francis E. Mayhue, Member

Edward W. Stuebing, Member.

